

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

20cr125
Plea

5 JOHN CICERO,

6 Defendant.
7

8
9 United States Courthouse
White Plains, New York

10 October 13, 2021
11

12
13 B e f o r e:

14 THE HONORABLE ANDREW E. KRAUSE,
15 United States Magistrate Judge
16

17
18 A P P E A R A N C E S:

19 DAMIAN WILLIAMS
20 United States Attorney for
the Southern District of New York
21 BY: DAVID R. FELTON
Assistant United States Attorney
22

23 MURPHY & McGONIGLE P.C.
Attorneys for Defendant
24 BY: STEVEN D. FELDMAN
25

PAMELA GRIMALDI, CRR, CLR
914.390.4053

1 THE DEPUTY CLERK: This is the matter of U.S. v.
2 Cicero, 20cr125, the Honorable Andrew Krause presiding.

3 Counsel, please note your appearance for the record
4 starting with the government.

5 MR. FELTON: Good afternoon, your Honor. David
6 Felton for the government. With me is Detective Daniel
7 McKenna, formerly of the FBI and now Westchester County DA's
8 office.

9 THE COURT: Good afternoon, Mr. Felton.
10 Good afternoon, Mr. McKenna.

11 MR. FELDMAN: Hello, Judge Krause. Steven Feldman
12 from Murphy & McGonigle, CJA panel on behalf of Mr. Cicero.
13 And I'm joined by Mr. Cicero today.

14 THE COURT: Good afternoon, Mr. Feldman.
15 Good afternoon, Mr. Cicero.

16 THE DEFENDANT: Good afternoon, your Honor.

17 THE COURT: Please be seated.

18 And just make sure to put your mask up, would you,
19 please.

20 And good afternoon, Ms. Grimaldi. How are you?

21 THE COURT REPORTER: Good.

22 THE COURT: Ms. Brown, can I just have the marked-up
23 copy of the plea agreement that's next to you?

24 Okay. Mr. Cicero, I wanted to advise you that
25 today's proceeding is not a trial. It is my understanding that

1 you have decided to enter a guilty plea in this proceeding.
2 This proceeding is for the purposes of ensuring that you are
3 aware of your rights in connection with your plea and that any
4 waiver of those rights is knowing and voluntary prior to
5 entering your guilty plea.

6 If at any time you don't hear or understand what I
7 say to you, please interrupt me so that I can repeat and
8 explain what I've said. If you want to confer with your
9 attorney at any time during the proceeding today, including
10 regarding any particular question that I've asked or any
11 particular thing that I have mentioned, please let me know so
12 we can make arrangements for you to do that.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Very good.

16 I want to advise you that you do have the right to be
17 represented by counsel throughout the entire case, and you may
18 consult with Mr. Feldman at any stage of this proceeding. You
19 also have the right to remain silent. Any statement that you
20 do make may be used against you. You have this right to remain
21 silent even if you have already made statements to law
22 enforcement officers.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Ms. Brown, will you please place

1 Mr. Cicero under oath or affirmation.

2 JOHN CICERO, having been duly sworn, testified as follows:

3 THE COURT: Thank you, Ms. Brown.

4 Mr. Cicero, it is important for you to understand
5 that if you knowingly make a false statement during these
6 proceedings, you could be subject to prosecution for the crime
7 of perjury or for making a false statement to the Court, and
8 you could face a punishment up to five years' imprisonment and
9 a \$250,000 fine for committing that crime. That punishment
10 would be separate and apart from any sentence that you may be
11 facing on the crime charged in the felony indictment that we
12 are here on today.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Cicero, would you please state your
16 full name for the record.

17 THE DEFENDANT: John William Cicero.

18 THE COURT: How old are you, Mr. Cicero?

19 THE DEFENDANT: 39 years old.

20 THE COURT: Are you a United States citizen?

21 THE DEFENDANT: Yes.

22 THE COURT: And are you a citizen by birth or a
23 naturalized citizen?

24 THE DEFENDANT: By birth.

25 THE COURT: Are you a citizen of any other country

1 other than the United States?

2 THE DEFENDANT: No.

3 THE COURT: How far did you go in formal school?

4 THE DEFENDANT: Three years.

5 THE COURT: Three years --

6 THE DEFENDANT: Of college.

7 THE COURT: Three years of college.

8 Have you taken any mind-altering drugs, medicine, or
9 pills, or consumed any alcohol in the last 24 hours?

10 THE DEFENDANT: No.

11 THE COURT: Is your mind clear here today,
12 Mr. Cicero? Do you understand what's happening here at this
13 proceeding?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Felton, does the government have any
16 objection or concern with Mr. Cicero's ability to proceed at
17 this time?

18 MR. FELTON: No, your Honor.

19 THE COURT: Thank you.

20 And Mr. Feldman, do you have any concern or objection
21 with respect to your client's ability to proceed?

22 MR. FELDMAN: No, your Honor.

23 THE COURT: Mr. Cicero, this proceeding is called a
24 plea allocution. I want you to understand that you have an
25 absolute right to have this plea allocution conducted before a

1 United States District Judge. It is the district judge, in
2 this case Judge Karas, who will impose a sentence in this case.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I am a United States Magistrate Judge.
6 If you consent, then I will conduct the plea allocution and I
7 will then make a report to Judge Karas in which I will
8 recommend whether or not he should accept your guilty plea. I
9 will make that recommendation based on the information that is
10 brought out during today's proceedings. It is important for
11 you to understand that the Court will not accept your plea
12 unless the Court is satisfied that you fully understand all of
13 your rights and that you are, in fact, guilty.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Okay. I have before me a form that is
17 labeled Consent to Proceed Before a United States Magistrate
18 Judge on a Felony Plea Allocution. The form is dated today,
19 October 13, 2021. It is signed by Mr. Feldman and by you,
20 Mr. Cicero. What the form says, in sum and substance, is that
21 you -- understanding that you have the right to have this plea
22 taken by a United States District Judge, that you agree to have
23 the plea taken by me, a United States Magistrate Judge,
24 instead.

25 First of all, Mr. Feldman, did you, in fact, sign

1 this form earlier today?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And Mr. Cicero, did you sign it as well?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Mr. Feldman, you signed it too?

6 MR. FELDMAN: I did, your Honor.

7 THE COURT: Mr. Cicero answered for both you and
8 Mr. Feldman. But that's fine.

9 Mr. Cicero, before you signed the form, did you have
10 an opportunity to discuss the contents of the form with
11 Mr. Feldman?

12 THE DEFENDANT: Yes, I did, your Honor.

13 THE COURT: All right. And did anyone threaten or
14 coerce you or promise you anything in order to get you to sign
15 the consent form?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Did you sign the form freely and
18 voluntarily?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Mr. Felton, do you know of any reason why
21 the waiver and consent to proceed with the plea allocution
22 before a United States Magistrate Judge should not be accepted?

23 MR. FELTON: I do not, your Honor.

24 THE COURT: Thank you.

25 And Mr. Feldman, do you know of any reason why the

1 waiver and consent form should not be accepted?

2 MR. FELDMAN: I do not, your Honor.

3 THE COURT: Thank you.

4 I find that Mr. Cicero is fully competent and
5 understands the proceedings before him. I also find that
6 Mr. Cicero is capable of waiving his right to appear before a
7 United States District Judge in order to enter his guilty plea,
8 and I therefore accept the consent form which has been signed
9 and is now part of the record. The consent form is marked as a
10 court exhibit and will remain in the file.

11 (Court Exhibit 1 was marked)

12 THE COURT: Mr. Cicero, I have been informed that you
13 wish to change your plea and to enter a plea of guilty as to
14 certain charges. Is that correct?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Before deciding whether to accept your
17 guilty plea, I am going to ask you a series of questions. It's
18 very important that you answer these questions honestly and
19 completely. The purpose of these questions is to make sure you
20 understand your rights, to decide whether you are pleading
21 guilty of your own free will, and to make sure that you're
22 pleading guilty because you are, in fact, guilty and not for
23 some other reason.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. Cicero, if do you not understand any
2 of the questions or you wanted any time to discuss them with
3 Mr. Feldman, please say so, because it is important that you
4 understand every question before you answer them. Okay?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, I have before me an indictment which
7 charges you and others with participation in a narcotics
8 conspiracy in violation of Title 21 United States Code § 846.
9 Mr. Cicero, have you received a copy of the indictment?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And have you had an opportunity to read
12 it?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand what it says?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Would you like me to read the indictment
17 to you here in open court?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Have you had time, Mr. Cicero, to speak
20 with Mr. Feldman about the charges and about how you wish to
21 plead?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you discussed the charges against
24 you and has he told you the consequences of pleading guilty?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. Cicero, are you satisfied with
2 Mr. Feldman's representation of you up until this point?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And have you told Mr. Feldman everything
5 you know about this case?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, I have before me a plea agreement
8 which is dated September 21, 2001. It is a seven-page document
9 signed by Mr. Felton, as well as by Jason Swergold, the deputy
10 chief of the White Plains division of the United States
11 attorney's office. It is also signed by Mr. Feldman and by
12 you, Mr. Cicero, with today's date, October 13, 2021.

13 Mr. Felton, is this the correct copy of the plea
14 agreement?

15 MR. FELTON: Yes, your Honor.

16 THE COURT: And Mr. Feldman, do you concur?

17 MR. FELDMAN: I do, your Honor.

18 THE COURT: Very good.

19 All right. Mr. Cicero, have you had an opportunity
20 to read the entire plea agreement which is dated September 21,
21 2021?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you reviewed each and every element
24 of the plea agreement with your attorney?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And did you, in fact, sign the plea
2 agreement earlier today?

3 THE DEFENDANT: Yes, I did, your Honor.

4 THE COURT: Mr. Feldman, did you review each and
5 every part of the plea agreement with Mr. Cicero?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: And Mr. Cicero, are you satisfied that
8 you understand the entire plea agreement which Mr. Feldman has
9 reviewed with you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you have any questions at this point
12 either for Mr. Feldman or for me about what the plea agreement
13 says?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Does the plea agreement contain the
16 complete agreement between you and the government in connection
17 with this case?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand, Mr. Cicero, that
20 anything that is not set forth in the plea agreement or which
21 is not told to me at this time on the record will not be
22 binding on the outcome of your case?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Mr. Felton, is there anything beyond the
25 written plea agreement that the Court should be aware of?

1 MR. FELTON: No, your Honor.

2 THE COURT: Mr. Feldman, is there any other agreement
3 that the Court should know about?

4 MR. FELDMAN: No, your Honor.

5 THE COURT: Thank you, both.

6 Mr. Cicero, did you sign the plea agreement freely
7 and voluntarily?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did anyone force you or coerce you or
10 threaten you or promise you anything other than what is set
11 forth in the written plea agreement in order to get you to sign
12 the plea agreement?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: At various points in the next few minutes
15 I'll be reading from portions of the plea agreement just so we
16 can review them in a bit more detail.

17 Mr. Cicero, if you are convicted of the charge
18 contained in the felony indictment, either after trial or by
19 plea of guilty, you would be subject to -- let me put it this
20 way: The charge itself, the narcotics conspiracy charge,
21 carries with it -- let me withdraw that for a second.

22 Just to be clear, as set forth in the first paragraph
23 of the plea agreement, the plea here today is to a lesser
24 included offense within the confines of the indictment.

25 Is that correct, Mr. Felton?

1 MR. FELTON: Yes, your Honor.

2 THE COURT: So I'm going to refer to the potential
3 term of imprisonment based on the lesser included offense at
4 this point, unless anybody has any objection to that.

5 Mr. Felton?

6 MR. FELTON: No, your Honor. That's fine.

7 THE COURT: Mr. Feldman?

8 MR. FELDMAN: No, your Honor, no objection.

9 THE COURT: So Mr. Cicero, under the terms of the
10 plea agreement, the government is accepting a guilty plea to
11 the lesser included offense of conspiring to distribute 50
12 grams and more of mixtures and substances containing a
13 detectable amount of methamphetamine, its salts, isomers, and
14 salts of its isomers in violation of Title 21 U.S. Code § 846
15 and 841(b)(1)(B), and that offense carries a maximum term of
16 imprisonment of 40 years, a mandatory minimum term of
17 imprisonment of five years, a maximum term of supervised
18 release of life, a mandatory minimum term of supervised release
19 of four years, a maximum fine pursuant to Title 18 U.S. Code §
20 3571 and Title 21 U.S. Code § 841(b)(1)(B) of the greatest of
21 \$5 million, twice the gross pecuniary gain derived from the
22 offense, or twice the gross pecuniary loss to persons other
23 than yourself resulting from the offense, as well as a \$100
24 mandatory special assessment.

25 Mr. Cicero, if you are sentenced to a term of

1 imprisonment, even if you are also sentenced to the maximum
2 term of imprisonment, if you are then sentenced to a term of
3 supervised release, if you violate the conditions of supervised
4 release, you could be sentenced to an additional term of
5 imprisonment for violating the conditions of your supervised
6 release, which in this case would be an additional term of up
7 to three years.

8 In addition, as set forth on page 2 of the plea
9 agreement, you have -- as part of the plea agreement you are
10 admitting the forfeiture allegation with respect to Count One
11 of the indictment, and you are agreeing to forfeit to the
12 United States, pursuant to Title 21 U.S. Code § 853, any and
13 all property constituting or derived from any proceeds obtained
14 directly or indirectly or intended to be used in any manner or
15 part to commit or facilitate the commission of the offense
16 charged in the indictment, including but not limited to a sum
17 of money in United States currency representing the amount of
18 proceeds traceable to the commission of the offense set forth
19 in the indictment.

20 It is further your understanding that any forfeiture
21 of assets will not be treated as satisfaction of any fine,
22 restitution, or any other punishment the Court may impose upon
23 you in addition to the forfeiture.

24 Mr. Felton, is there any particular specification
25 with respect to potential restitution in this matter?

1 MR. FELTON: Your Honor, there is no restitution in
2 this case and the amount of forfeiture has not been determined
3 yet, but it will align with the conditions set forth in the
4 plea agreement that your Honor just read.

5 THE COURT: Very good. Thank you, Mr. Felton.

6 Mr. Cicero, do you understand that these are the
7 possible sentences that could be imposed following your guilty
8 plea in this case?

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: Do you also understand that you are
11 pleading guilty to a felony offense and that this adjudication
12 may deprive you certain valuable civil rights which may include
13 the right to vote, the right to hold public office, the right
14 to serve on a jury, the right to possess any type of firearm,
15 including rifles and shotguns, the right to be considered for
16 certain types of employment, or to be bonded, or to serve in
17 the United States military, and the right to possess or obtain
18 certain government-issued licenses, including licenses that may
19 be required in certain professions and occupations?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: I will further advise you that many of
22 the civil rights I just described, including the right to vote,
23 are controlled by state law, so the specific consequences of a
24 felony conviction will vary from state to state.

25 One effect of a plea of guilty to a narcotics-related

1 offense such as this one is that you may be ineligible for
2 certain federal and federally funded benefits that you would
3 otherwise have been eligible for, including but not limited to
4 Social Security, food stamp benefits, education loans or
5 grants, and public housing or housing subsidies.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that this consequence
9 may be for a limited period of time or it may be a permanent
10 barrier to your obtaining these benefits, depending on the
11 crime of conviction and your prior criminal record?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Okay. Mr. Cicero, do you understand that
14 these are the possible legal consequences of a guilty plea?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand, Mr. Cicero, that the
17 United States Sentencing Commission has issued guidelines for
18 judges to follow in determining the appropriate sentence in a
19 criminal case?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you also understanding that the
22 sentencing guidelines are not mandatory, but that they must be
23 considered by the Court along with other factors listed at
24 Title 18 U.S. Code § 3553 when the judge determines the
25 appropriate sentence to impose, including possible departures

1 from the guidelines?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Have you and Mr. Feldman talked about
4 how the sentencing guidelines will be calculated in your case?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: The plea agreement in this case sets
7 forth a stipulated sentencing range of 168 to 210 months and a
8 stipulated fine range of between \$40,000 and \$5 million. Do
9 you understand that this is simply an understanding between you
10 and Mr. Feldman and Mr. Felton and that it is not binding on
11 Judge Karas when he imposes sentence in this case?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that Judge Karas will
14 consider the guidelines but will impose a sentence in
15 accordance with the statute, which in this case means that the
16 prison term will not be more than 40 years and will not be less
17 than five years?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you also understand that the Court
20 will not be able to determine the appropriate sentence until
21 after the presentence report has been prepared and until you
22 and Mr. Feldman, as well as the government, have had an
23 opportunity to challenge the facts reported in the presentence
24 report and the calculation of the sentencing guideline range
25 and any sentence recommendation in that report?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you also understand that if there are
3 any objections to the presentence report, that those objections
4 will be ruled on by the Court and, if necessary, a hearing will
5 be held to determine what information is relevant to the
6 Court's determination of the sentence?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: All right. As part of the plea
9 agreement, Mr. Cicero, you have agreed to waive certain
10 appellate rights, and I want to make sure that you understand
11 that specifically, and I'll go through those with you here.

12 Do you have a copy of the plea agreement in front of
13 you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: All right. I'm going to look at the
16 bottom of page 4, in particular, to review these appellate
17 waivers with you.

18 Specifically, you have agreed, as part of the plea
19 agreement, that you will not file a direct appeal or bring a
20 collateral challenge, including but not limited to any
21 application under Title 28 U.S. Code § 2255 or 2241 of any
22 sentence within or below the stipulated guidelines range of 168
23 to 210 months in prison.

24 Turning to the top of page 5, you further have agreed
25 not to appeal or bring a collateral challenge of any term of

1 supervised release that is less than or equal to the statutory
2 maximum, and you have agreed not to appeal or bring a
3 collateral challenge of any fine that is less than or equal to
4 \$5 million. You have also agreed not to appeal or bring a
5 collateral challenge of any special assessment that is less
6 than or equal to \$100.

7 That said, the plea agreement specifies that none of
8 these waivers shall be construed to be a waiver of whatever
9 rights you may have to assert claims of ineffective assistance
10 of counsel.

11 In addition to the plea agreement, you have agreed to
12 waive any and all right to withdraw your plea or to attack your
13 conviction, either on direct appeal or collaterally, on the
14 ground that the government has failed to produce any discovery
15 material, Jencks Act material, exculpatory material pursuant to
16 *Brady v. Maryland* other than information establishing your
17 factual innocence, or impeachment material pursuant to *Giglio*
18 *v. United States* that has not already been produced as of the
19 date this agreement was signed, which was today, October 13,
20 2021.

21 Do you understand that, Mr. Cicero?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Mr. Cicero, do you understand that if you
24 disagree with the Court's sentencing decision, that that will
25 not give you the basis for withdrawing your guilty plea?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you also understand that parole has
3 been abolished in the federal system, and if you are sentenced
4 to a term of imprisonment, you will not be eligible for early
5 release on parole?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that you do not have to
8 plead guilty? You have an absolute right to continue in your
9 plea of not guilty and to have your matter go to trial either
10 before a judge or a jury?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand that if you continue in
13 your plea of not guilty, you are entitled to have a speedy and
14 public trial of your case?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that at any trial of
17 this matter, if there were to be a trial, you would be entitled
18 to a presumption of innocence, and that the presumption would
19 remain with you until the government proves each and every
20 element of the crimes charged beyond a reasonable doubt to the
21 satisfaction of a judge, if it is a judge trial, or to the
22 unanimous satisfaction of the jury, if it is a jury trial?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If there were a trial, Mr. Cicero, you
25 would have the right, with the assistance of your attorney, to

1 confront and cross-examine the witnesses against you. You
2 would have the right to call witnesses to testify for you and
3 to have subpoenas issued to compel witnesses to give testimony.
4 You would also have the right to testify at your trial, but you
5 could not be forced to testify. If you decided not to testify,
6 your decision to remain silent could not be held against you in
7 any way.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: At your trial, if there were a trial, you
10 would also have the right to the assistance of an attorney and
11 to have an attorney appointed to represent you if you could not
12 afford counsel.

13 Do you understand, Mr. Cicero, that if you plead
14 guilty to the charge in the felony indictment, that you would
15 give up your right to a trial, and except for the right to
16 counsel, you would also give up all the other rights which I
17 have explained to you here?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Mr. Cicero, have you clearly heard and
20 understood everything I've said to you here today?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you have any questions for me or for
23 Mr. Feldman about anything I've said or about anything I've
24 asked you?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Okay. Thank you, Mr. Cicero.

2 Mr. Felton, turning to you, what are the elements of
3 the offense here and what is the government prepared to prove
4 at trial in order to establish those elements?

5 MR. FELTON: Yes, your Honor.

6 The elements are, first, two or more persons agreed
7 to violate the federal drug laws; second, the defendant
8 knowingly and voluntarily entered into the conspiracy; and
9 third, the objective of the conspiracy was to distribute 50
10 grams and more of mixtures and substances containing a
11 detectable amount of methamphetamine, its salts, isomers, and
12 salts of its isomers, and mixtures and substances containing a
13 detectable amount of GBL. The government would also need to
14 prove by a preponderance of the evidence that venue was
15 appropriate in the Southern District of New York. Here,
16 narcotics transactions were carried out by the defendant in
17 Manhattan and Bronxville, and acts in furtherance of the
18 conspiracy occurred in Bronxville and Manhattan, including
19 narcotics transactions, narcotics storage, and calls arranging
20 narcotics transactions.

21 If this case were to proceed to trial, the government
22 would expect to present the following evidence, among other
23 things: Recorded New York State prison calls in which the
24 defendant and codefendant Irma Materasso arranged GBL and
25 methamphetamine transactions, including Cicero supplying

1 codefendant Marco Caso with GBL and receiving methamphetamines
2 from Caso. Government would also expect to introduce line
3 sheets and recordings made pursuant to judicially authorized
4 wiretaps of Caso's phone where the defendant discussed
5 narcotics trafficking with Caso, including pricing, payment,
6 drug sales, and arranging meetings in hotel rooms. For
7 instance, on February 5, 2020 the defendant called Caso.
8 Cicero told Caso to order \$10,000 worth of product for him and
9 he will settle the bill with one call. Caso told Cicero he
10 will get it for him, no problem.

11 The government would further expect to introduce
12 January 30, 2020 FBI physical surveillance of an in-person
13 methamphetamine transaction between the defendant and Caso in a
14 white van as arranged by Materasso, Cicero, and Caso over the
15 Caso wiretaps. That day before the meeting, over an
16 intercepted call, Caso told Cicero, I am locked and loaded.

17 The government would also expect to introduce an
18 audio-video recording of a December 3, 2019 controlled buy of a
19 cooperating witness from Caso where, during the transaction,
20 Caso and the cooperating witness discussed Cicero as a source
21 of GBL. Caso said, I think he just got a shipment, but I
22 ordered some -- I ordered a lot from him. Caso explained that
23 the defendant is a large-scale GBL supplier who buys GBL in
24 \$5,000 to \$10,000 quantities at a time through the mail.

25 The government also would expect to introduce U.S.

1 customs and border protection seizure reports relating to
2 seized GBL from China sent to the attention of John Cicero of
3 Bronxville, New York. The government also would expect to
4 introduce an extraction of the defendant's cell phone
5 containing images of and communications regarding narcotics and
6 payment for narcotics with numerous Western Union receipts from
7 the defendant to China and Mexico, including direct
8 communication with the Mexico-based source of methamphetamine
9 saved in the defendant's phone as Maria Mexico.

10 The government also would expect to introduce the
11 following items recovered from searches of premises controlled
12 by Cicero as part of his arrest: GBL, methamphetamine, and a
13 drug scale were recovered from Cicero's hotel room; GBL was
14 recovered from Cicero's storage unit in Manhattan; and GBL,
15 three drug scales with residue, and drug packaging were
16 recovered from his parents' residence, and drug ledgers
17 reflecting the trafficking of large quantities of narcotics for
18 thousands of dollars.

19 The government would further expect to present phone
20 records indicating that Mr. John Cicero is listed as the
21 subscriber for a telephone number the defendant used to broker
22 narcotics transactions with Caso over the Caso wiretap. The
23 government would also expect to present seized narcotics and
24 audio-video footage from nine audio-video recorded controlled
25 purchases of methamphetamine, and two audio-video recorded

1 purchases of GBL, all from codefendant Caso. Over the course
2 of these purchases, Caso sold approximately 2,000 grams of
3 methamphetamine and approximately 3.5 liters of GBL to a
4 cooperating witness.

5 The government would further expect to present
6 recorded calls and communications arranging the controlled
7 purchases, lab reports and related expert testimony, law
8 enforcement and cooperating witness testimony, surveillance by
9 law enforcement including photographs of coconspirators
10 engaging in narcotics transactions, prison calls of
11 coconspirators arranging narcotics transactions, Western Union
12 subpoena returns, and toll records and phone location
13 information, all of which would establish beyond a reasonable
14 doubt that the defendant conspired with others to distribute at
15 least 50 grams and more of mixtures and substances containing a
16 detectable amount of methamphetamine, its salts, isomers, and
17 salts of its isomer, and mixtures and substances containing a
18 detectable amount of GBL from in or about 2017 up to and
19 including February 2020 in, among other places, Bronxville and
20 Manhattan.

21 THE COURT: Okay. Thank you, Mr. Felton.

22 I just want to clarify one thing. You referred
23 throughout that recitation to both the sale and distribution of
24 methamphetamine and the sale and distribution of GBL, which is
25 perfectly consistent with what I asked you because I asked you

1 about the elements of the offense charged in the indictment and
2 what the government would be prepared to prove at trial if the
3 plea for whatever reason did not go forward. So you did
4 exactly what I asked you to do.

5 But just to be clear, because Mr. Cicero is pleading
6 guilty here to the lesser included offense that really, as set
7 forth in the plea agreement, only pertains to methamphetamine.
8 It's my understanding that in terms of an allocution, we're
9 only expecting to hear from Mr. Cicero with respect to the
10 methamphetamine component of the charge. Unless I'm mistaken.
11 I just want to understand that before I turn to Mr. Cicero.

12 MR. FELTON: Your Honor, because -- the way the
13 government understands the first paragraph of the plea
14 agreement is that because the GBL object of the conspiracy was
15 always a (b)(1)(C) count, that is part of the plea that is --
16 that is -- in the lesser included offense. That is to say that
17 while it is a (b)(1)(B) methamphetamine count, it is also a
18 (b)(1)(C) GBL count.

19 THE COURT: Okay. Mr. Feldman, do you have any
20 objection to that or different understanding of it?

21 MR. FELDMAN: I do, your Honor. Mr. Cicero is
22 prepared to make an allocution about a conspiracy to distribute
23 50 grams and more of a mixture and substance containing a
24 detectable amount of methamphetamine.

25 THE COURT: Okay. Mr. Felton, that is what it says

1 here. I mean, it says, The government will accept a guilty
2 plea to the lesser included offense of conspiring to distribute
3 50 grams and more of mixtures and substances containing a
4 detectable amount of methamphetamine, its salts, isomers, and
5 salts of its isomers, in violation of U.S. Code 846 and
6 841(b)(1)(B), and then it goes on to recite the penalties
7 associated with that.

8 I mean, I understand in theory that the GBL charge is
9 an 841(b)(1)(C) charge, but what the plea agreement says on its
10 face is that the offense for which Mr. Cicero is pleading
11 guilty is an 846 (b)(1)(B) charge pertaining to
12 methamphetamine.

13 MR. FELTON: Yes. Your Honor, that's understood.
14 And perhaps the drafting could have been clearer on the
15 government's part. The government would point out that under
16 the offense level on page 2(a)(3), the drug weight, which
17 drives the guidelines, are driven, you know, in large part by
18 the GBL quantity weight, as well, here. So paragraph (a)(3)
19 notes that the defendant is stipulating to that the offense
20 involved 750,000 milliliters of GBL, and that accounts for the
21 Level 34 drug weight as well. And also in the immunity
22 paragraph on page 1, the government notes that the conspiracy
23 relates -- is a conspiracy to distribute methamphetamine and
24 GBL on the bottom of page 1.

25 So for those reasons, the government believes that

1 the GBL is encompassed in the defendant's guilty plea. And
2 he's stipulating to a drug weight that is based, in part, on
3 the weight of GBL traffic as well.

4 THE COURT: Okay. Thank you, Mr. Felton.

5 Mr. Feldman, there are various references in the plea
6 agreement, other than the section that I've just read -- as
7 Mr. Felton points out, there are various references to GBL and
8 to the quantity of GBL being a substantial factor in the
9 guidelines calculation.

10 MR. FELDMAN: Yes, your Honor. We're stipulating to
11 the guidelines calculation. We're not disputing that that's
12 not relevant conduct or anything like that. So that's --
13 certainly the GBL is relevant conduct for purposes of
14 Mr. Cicero's sentencing, and we're not going to dispute that, I
15 do not believe. That's what we're pleading to in signing this
16 plea agreement. So those numbers all attach. But in terms of
17 what he needs to plead to today and what we've prepared an
18 allocution for, and he's prepared an allocution for, as you
19 read the plea agreement, 50 grams and more of a mixture and
20 substance of methamphetamine.

21 THE COURT: Okay. Well, let me ask you this: I
22 mean, there's obviously some dispute or disagreement as to what
23 the scope of the allocution should be, and it would be helpful
24 if there could be an agreement as to what the scope of the
25 allocution should be. But if there isn't, we can go forward

1 based on what my understanding is. It's just it would be
2 unfortunate if we get to a point several months from now when
3 Mr. Cicero is to be sentenced before Judge Karas and this turns
4 out to be a problem. So I'm going to just take a five-minute
5 recess and allow you, Mr. Felton, and you, Mr. Feldman, to
6 discuss this further and see if you have a meeting of the minds
7 on this issue. If not, we can proceed in whichever way I think
8 is appropriate. But I want to give you an opportunity to talk
9 about it to see if there can be an agreed-upon resolution, only
10 because I think that will make things more straightforward when
11 this gets presented to Judge Karas for sentencing.

12 But, again, if you're not able to resolve it, then
13 we'll go forward anyway. It's just that we may find ourselves
14 with a problem down the line.

15 So I'm going to just adjourn for five minutes. I'm
16 going to step off the bench, you can stay here and discuss, and
17 come back very shortly.

18 (A recess was taken.)

19 THE COURT: Okay. Let's go back on the record.

20 Mr. Felton, have you reached an agreement as to what
21 the allocution should include?

22 MR. FELTON: Yes, your Honor. The government
23 understands from the defendant that he will allocute to both
24 objects, which would be (b)(1)(B) methamphetamine as well as
25 (b)(1)(C) GBL.

1 THE COURT: Okay.

2 Mr. Feldman, do you concur with that?

3 MR. FELDMAN: Yeah. The plea agreement, your Honor,
4 is staying exactly the same. We're not modifying or changing
5 it. But for purposes of his allocution, Mr. Cicero is going to
6 mention that he was also involved with distributing GBL.

7 THE COURT: Okay. Well, let's proceed. Thank you
8 both.

9 Mr. Cicero, did you hear everything that Mr. Felton
10 described in his recitation of the elements of the offenses and
11 what the government would be prepared to prove at trial?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And at this time, how do you wish to
14 plead to the charge of the lesser included offense of
15 conspiring to distribute 50 grams and more of mixtures and
16 substances containing a detectable amount of methamphetamine,
17 its salts, isomers, and salts of its isomers, in violation of
18 Title 21 U.S. Code § 846 and 841(b) (1) (B)?

19 THE DEFENDANT: Guilty.

20 THE COURT: Okay. Mr. Cicero, has anyone threatened
21 you or coerced you or pressured you improperly in order to get
22 you to plead guilty to this charge?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anyone made any promises to you other
25 than what is set forth in the plea agreement in order to induce

1 you to plead guilty?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone made any specific promises to
4 you about what the sentence of the Court will be?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Mr. Cicero, please tell me in your own
7 words what you did to commit the crimes.

8 THE DEFENDANT: From in or about 2017 through in or
9 about February of 2020, I agreed with others to distribute GBL
10 and more than 50 grams of mixtures and substances containing
11 detectable amounts of methamphetamine. I participated in the
12 conspiracy by allowing my contact information to be used to
13 send a Western Union payment to a supplier in Mexico to
14 purchase methamphetamine, by communicating with the supplier in
15 Mexico, and by renting hotel rooms where we held parties and
16 where crystal meth was distributed. I was involved in this
17 activity in Westchester County and Manhattan. At the time I
18 knew that what I was doing was wrong. I sincerely apologize
19 for my criminal conduct.

20 THE COURT: Okay. Thank you, Mr. Cicero.

21 You mentioned that you engaged in this activity with
22 others. So that was -- it was more than just you who -- was at
23 least one other person involved?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And did you enter into that agreement

1 with this one or more additional people knowingly and
2 voluntarily?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Okay. Across the board with respect to
5 the conduct that you just described, did you commit these acts
6 knowingly and willfully?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And did you know it was against the law
9 to do what you were doing?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Okay.

12 Mr. Felton, is there anything else that the
13 government believes the Court needs to elicit from Mr. Cicero
14 before making the recommendation contemplated by Rule 11?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Thank you.

17 Mr. Feldman, do you believe there is anything else
18 the Court needs to elicit before I can make a Rule 11
19 recommendation?

20 MR. FELDMAN: No, your Honor.

21 THE COURT: Thank you.

22 All right. Mr. Felton, do you know of any reason why
23 the Court should not recommend acceptance of Mr. Cicero's
24 guilty plea in this matter?

25 MR. FELTON: No, your Honor.

1 THE COURT: And Mr. Feldman, do you know of any
2 reason why the Court should not recommend acceptance of
3 Mr. Cicero's guilty plea?

4 MR. FELDMAN: No, Your Honor.

5 THE COURT: Mr. Cicero, in light of everything that's
6 been said here today, is it still your wish to plead guilty to
7 the charge of the lesser included offense contained in the
8 felony indictment?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: On the basis of your allocution,
11 Mr. Cicero, and your responses to my questions, I find that you
12 are fully competent and capable of entering an informed plea.
13 I'm satisfied that you understand your rights, including your
14 right to go to trial, that you are aware of the consequences of
15 your plea, and that includes the sentence that may be imposed.

16 Based on this plea allocution, I find that
17 Mr. Cicero's plea is knowing and voluntary and is supported by
18 an independent factual basis for each and every element of the
19 crime charged. Accordingly, I respectfully report and
20 recommend to Judge Karas that the plea be accepted and that
21 Mr. Cicero be judged guilty of the offense, the lesser included
22 offense, charged in the felony indictment.

23 I also direct that a presentence investigation be
24 conducted by the United States Department of Probation and that
25 a presentence report be prepared. Within 14 days from today,

1 so no later than October 27, 2021, Mr. Feldman, please contact
2 the Department of Probation to arrange for a presentence
3 interview.

4 Mr. Cicero, once that interview is scheduled with a
5 representative of the Department of Probation, you will have
6 this interview. And I'm sure that Mr. Feldman will assist you
7 in connection with that interview if you wish. You must be
8 fully honest and truthful during that interview, because if it
9 comes to the Court's attention that you have provided false,
10 incomplete, or misleading information, that may be held against
11 you at the time of sentencing.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. Mr. Felton, the prosecution
15 case summary for purposes of the presentence report is to be
16 delivered to the probation department no later than October 27.

17 MR. FELTON: Yes, your Honor.

18 THE COURT: And Ms. Grimaldi, if you'd please provide
19 a transcript of these proceedings within 30 days setting forth
20 my report and recommendation to Judge Karas. And per our
21 standard practice in the courthouse, please send the transcript
22 to me first for review.

23 Ms. Brown, do we have a sentencing date from Judge
24 Karas yet?

25 THE DEPUTY CLERK: We do. It's February 10, 2022 at

1 10:00 a.m.

2 THE COURT: All right. This matter is adjourned for
3 sentencing. The sentencing date is February 10, 2022 at 10:00
4 a.m. If counsel have any issues with that date, please contact
5 Judge Karas's chambers to discuss that schedule.

6 Is there anything further that we should address
7 today from the government's perspective?

8 MR. FELTON: No, your Honor. Thank you.

9 THE COURT: And anything further from the defendant's
10 perspective?

11 MR. FELDMAN: No, your Honor. Thank you.

12 THE COURT: All right. Thank you, Counsel.

13 Thank you, everyone.

14 Thank you, Mr. Cicero.

15 THE DEFENDANT: Thank you, your Honor.

16 THE COURT: We are adjourned. Take care. Stay safe
17 and stay healthy, everybody.

18

19

20 CERTIFICATE: I hereby certify that the foregoing is a true and
21 accurate transcript, to the best of my skill and ability, from
my stenographic notes of this proceeding.

22



23

Pamela L. Grimaldi, RPR, CRR, CLR
Official Court Reporter, USDC, SDNY

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